Editor's note: Reconsideration denied by Order dated July 3, 1991

ANIMAL PROTECTION INSTITUTE OF AMERICA ET AL.

IBLA 90-412, 90-413, 90-414 Decided February 23, 1991

Appeals from decisions of the Rock Springs Wyoming District Office and the Grass Creek Resource Area Office, Bureau of Land Management, authorizing the gathering of excess wild horses.

Motion to dismiss IBLA 90-412 granted, decisions affirmed.

1. Rules of Practice: Appeals: Standing to Appeal--Administrative Procedure: Standing

   Determinations of judicial standing do not control adjudications of administrative standing. Standing before the Board of Land Appeals is governed by 43 CFR 4.410(a).

2. Administrative Authority: Generally--Administrative Procedure: Judicial Review

   The Board of Land Appeals has no authority to revise, amend, or clarify language of a United States District Court order defining "appropriate management levels" and "excess."

3. Rules of Practice: Appeals: Burden of Proof--Wild Free-Roaming Horses and Burros Act

   When an appellant merely urges some other course of action which may be theoretically as correct as that chosen by BLM, this Board will not overturn a BLM decision to gather excess wild horses. The Department is entitled to rely on the reasoned analysis of its experts in matters within the realm of their expertise. In cases involving an expert's interpretation of data, it is not enough that the party objecting to the determination demonstrates that another course of action or interpretation is available or that the proposed course of action is also supported by the evidence. The appellant must demonstrate by the preponderance of the evidence that the BLM expert erred when collecting the underlying data, when interpreting that data, or in reaching the conclusion.

APPEARANCES: Jo Ann M. Chase, Rock Springs, Wyoming, pro se; Nancy Whitaker, Sacramento, California, for the Animal Protection Institute of America; Dawn Lappin, Sacramento, California, for the Wild Horse Organized Assistance; Glenn F. Tiedt, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Animal Protection Institute of America (API) and the Wild Horse Organized Assistance (WHOA) have jointly appealed two Bureau of Land Management (BLM) decisions to gather wild horses in Wyoming. The appeal docketed as IBLA 90-413 is from a May 29, 1990, Rock Springs District decision to gather between 461 and 777 wild horses from the White Mountain, Great Divide Basin, and Salt Wells Creek Wild Horse Herd Management Areas (WHHMA's) and between 56 and 67 wild horses from the Firehole area (not in a WHHMA), in the manner described in Environmental Assessment (EA) No. WY-048-EA9-213. The appeal docketed as IBLA 90-414 is from a June 11, 1990, Grass Creek Resource Area Manager's decision to gather 188 wild horses within the Fifteenmile Wild Horse Herd Management Area (Fifteenmile WHHMA; Appendix A) and to remove all "satellite" wild horses outside the Fifteenmile WHHMA based on BLM's "Evaluation and Update to the Fifteenmile Area Wild Horse Management/Capture Plan, Environmental Assessment [EA No. WY016-EA0-08], and Record of Decision" (Update).

Jo Ann M. Chase has also appealed the Rock Springs District Office May 29, 1990, decision outlined above, and her appeal has been docketed as IBLA 90-412. Her appeal is limited to that portion of the decision relating to gathering horses from the Firehole area. 1/

On July 27, 1990, this Board consolidated IBLA 90-412 and 90-413, granted expedited consideration of those cases, and responded to API's motion to stay and BLM's motion to place the Rock Springs May 29, 1990, decision in force and effect stating:

> In their request for a stay, API and WHOA state that BLM failed to establish the proper basis for determining whether there are excess numbers of wild horses in the areas studied in Environmental Assessment No. Wy-048-EA9-213. These areas include the Salt Wells/Pilot Butte checkerboard lands and the Sandy

1/ On Jan. 24, 1991, counsel for the Wyoming Public Lands Council (PLC) filed a "Petition for Intervention and Request for Remand to an Administrative Law Judge for Hearing." In its petition PLC represents that it seeks to intervene in all three appeals, but the substance of the petition relates only to IBLA 90-414, involving the Fifteenmile WHHMA. The petition is granted only as to IBLA 90-414, and we have considered the petition in our review of that appeal. Given our resolution of that appeal, the request for remand is denied.

> Resource Area. [2/] For these areas, the Federal District Court has defined the term "excess," within the meaning of 16 U.S.C. 1332(f) (1982), and it would now take court action to change that definition. [3/] To the extent that the May 29, 1990, BLM decision is applicable to the areas subject to the above-described court orders, it is hereby placed into full force and effect, and API and/or WHOA may seek relief from the court if they disagree with the court's prior determination.
>
> For those areas described in the May 29, 1990, decision and the underlying Environmental Assessment not subject to the above-described court orders, we decline to grant full force and effect to that decision, as to do so may effectively moot the appeals. Likewise, we deny the API/WHOA request that this Board issue an order directing BLM to show cause that it is in compliance with statutory restrictions for basing a removal on monitoring data. The appellants are charged with the responsibility for showing error, and we do not deem it appropriate for this Board to shift the burden to BLM.

On October 5, 1990, we consolidated IBLA 90-414 with previously consolidated 90-412 and 90-413 and extended expedited consideration to 90-414.

[1] We find it necessary to address first the BLM motions to dismiss the appeals for lack of standing. The primary basis for seeking dismissal is the same as that addressed in Animal Protection Institute, 117 IBLA 208 (1990). In that case, as well as the cases now before us, BLM relied extensively on the U.S. Supreme Court's decision in Lujan v. National Wildlife Federation, __ U.S. __, 58 U.S.L.W. 5077, 5080 (June 26, 1990), as the basis for its assertion that appellants must establish that the injury they complain of falls within the zone of interests sought to be protected by the statutory provision whose violation forms the legal basis for their complaint.

Lujan v. National Wildlife Federation and the other cases cited by BLM address standing to seek judicial review of agency action. At issue now is standing to seek administrative review. This Board has previously recognized that the two are not synonymous and expressly rejected the notion that determinations addressing judicial standing control when seeking to determine administrative standing. High Desert Multiple-Use Coalition, 116 IBLA

2/ At page 8 of its Motion to Dismiss and Answer in IBLA 90-413 BLM explains that "[t]he Salt Wells/Pilot Butte checkerboard lands is generally that area south of Interstate 80 now designated as the Salt Wells Creek WHHMA, and the Big Sandy area is generally that area north of Interstate 80 now designated as the White Mountain and Great Divide Basin WHHMAs."

3/ See Mountain States Legal Foundation v. Andrus, No. C79-275K (D. Wyo. Mar. 13, 1981), amended, Mountain States Legal Foundation v. Watt, No. C79-275K (D. Wyo. Feb 19, 1982).

47, 48-49 n.1 (1990); Colorado Open Space Council, 109 IBLA 274, 286 (1989); Pacific Coast Molybdenum, 68 IBLA 325, 332 (1982).

Standing before the Board of Land Appeals is governed by 43 CFR 4.410(a) and is not governed by section 702 of the Administrative Procedure Act, 5 U.S.C. § 702 (1988). BLM seeks to superimpose a zone of interest test on the Board's standing requirement that a party be adversely affected. This Board has not required an appellant to be within the urged "zone of interest" of the statute. As noted in Animal Protection Institute: "The language 'within the meaning of the relevant statute' which is implemented by the zone of interest test is not dispositive of standing before this Board." Animal Protection Institute, supra at 209.

Appellants essentially maintain that cultural and aesthetic enjoyment of specific public lands have been adversely affected, i.e., diminished by BLM's decision to reduce or eliminate wild horses from specified lands.
Appellants and their members' cultural and aesthetic enjoyment is clearly adversely affected by BLM's decision proposing to remove horses from the specified lands. Accordingly, the motion to dismiss API and WHOA's appeals is denied, and we reject the "zone of interest" test urged by BLM as a basis for dismiss-ing the Chase appeal.

BLM additionally alleges that Chase has failed to satisfy the requirement imposed by 43 CFR 4.410(a) that she be "a party to a case," because "Chase neither participated in the process prior to this appeal" nor "comment[ed] on WY-048-EA9-213, the environmental assessment for this decision" (BLM's Reply to Chase Response to Motion to Dismiss (BLM Reply (Chase) at 2).

Contrary to BLM's arguments, we find that Chase had commented on
the removal of wild horses from the Firehole area. Those comments can be found in that document initiated by her and filed with BLM on May 25, 1990. Standing to appeal to this Board is governed by 43 CFR 4.410(a) and applicable decisions of this Board. Under that provision, "[a]ny party to a
case who is adversely affected by a decision of an officer of the Bureau of Land Management * * * shall have the right to appeal to the Board." To be a party to the case a person must have actively participated in the decisionmaking process regarding the subject matter of the appeal. A person must be a party to the case to have a right to appeal to the Board. The Wilderness Society, 110 IBLA 67, 70-71 (1989); Mark S. Altman, 93 IBLA 265, 266 (1986); Sharon Long, 83 IBLA 304, 307 (1984). The record demonstrates that Chase submitted comments and actively participated in the decisionmaking process regarding the subject matter of the appeal. There is sufficient evidence that she is "a party to a case" for purposes of establishing standing pursuant to 43 CFR 4.410(a).

Chase may have standing to appeal but has failed to articulate specific errors in the decision being appealed. She merely records her disagreement. Conclusory allegations of error, standing alone, do not suffice United States v. De Fisher, 92 IBLA 226, 227 (1986). Statements alleging impropriety unaccompanied by evidence and supporting documentation or mere

differences of opinion are insufficient to demonstrate error in BLM's decision. We therefore dismiss her appeal.

Rock Springs District Decision

We will now address the merits of the API and WHOA appeal of the May 24, 1990, Rock Springs District Office decision. They contend generally that the Wyoming decision to remove horses to reduce the herd sizes
to the Cooperative Range Management Plan (CRMP) level set out in the land use plans fails to meet the statutory restriction for basing a removal on monitoring data to determine "[e]xcess" and establish an optimum number
for herd areas based on monitoring the range and determining a management level. They dispute BLM's determination that the reduction in horses is necessary to achieve a thriving ecological balance, contending a lack of sufficient evidence to support the conclusion that resource damage will
be corrected by this removal action, and deny the existence of sufficient information to determine the optimum herd sizes (API Motion to Stay at 1).

API and WHOA reluctantly admit that the lower court rulings on the checkerboard lands lock BLM into a program of maintaining a set number of horses on lands intermingled with the Grazing Association's private lands, but, question whether "IBLA's ruling" 4/ requires use of these numbers even though the optimum number based on monitoring data may be greater than the number the court ordered as appropriate management levels (AML's). They argue that, if this is not the case, BLM cannot exercise its management responsibility over these lands and question whether a unique approach with respect to the checkerboard areas is dictated by the Grazing Association.

API and WHOA perceive a BLM abdication of congressionally vested authority to the local Rock Springs Grazing Association (RSGA) (Motion to Stay at 2). They also find a discrepancy between the Federal District Court ruling setting original numbers with a 2-year enforcement period and the subsequent Federal District Court order. In order to find the discrepancy they construe the court order as merely setting the starting numbers for use when monitoring to determine optimum numbers. Thus, API and WHOA read the order as confirming the need to determine the optimum herd size based on monitoring data before removing horses from the public lands (API's protest to Rock Springs Removals from Inside HMA's dated May 10, 1990, at 1). They maintain that

> the proper approach * * * is for BLM to proceed to its review of the multiple-use objectives in the allotment evaluations process to adjust preference while providing for the current number of horses until proper monitoring data supports a wild horse removal and "AML" is based on actual current wild horse utilization data in keeping with the IBLA's 1989 orders.

Id. at 2.

4/ We presume appellants are referring to this Board's decision in Animal Protection Institute of America, 109 IBLA 112 (1989).

API urges that its proposed construction is supported by the following language in the District Court's amended order:

> Further ordered that the first paragraph on page 3 be amended as follows:
>
> > FURTHER ORDERED that "excess," as used in this Order, means those wild horses above the population level that the Bureau of Land Management has determined to be appropriate, in accordance with its multiple-use management responsibilities under 16 U.S.C. 1332 (f) and 1333; or in the absence of such a determination, the number of horses above the number present at the time the Act was passed.

Mountain States Legal Foundation v. Watt, No. C79-275K, Order Amending Judgment Nunc Pro Tunc (D. Wyo. Feb. 19, 1982) (API Response to Motion to Dismiss at 5-6).

BLM argues that API and WHOA have failed to show any factual errors in its decision and denies appellants' contention that BLM's Rock Springs decision is based on any CRMP determined level. BLM insists that its decision is based on the AML established by court order in Mountain States Legal Foundation v. Andrus (Motion and Answer (IBLA 90-413) at 4). BLM further avers that

> [t]he number of excess animals to be removed was determined by monitoring, and the removal is intended to "benefit the remaining horses by improving the quality and quantity of forage" (EA at 14) and to "reduce the amount of utilization on key forage species and allow continuation of authorized livestock use." (EA at 15).

Id.

Noting that BLM states that the proposed action anticipates and prevents, and not merely restores and corrects resource damage, API and WHOA observe that BLM's management program sets objectives, monitors to see that its objectives are met, and makes adjustments based on monitoring. They insist that the monitoring required by statute is to determine whether wild horses or burros cause the imbalance of the ecological conditions that constitute a thriving, dynamic state of rangelands. According to appellants, removal of wild horses from public lands is authorized only after monitoring shows that removal will achieve a balance of the ecological conditions (API Response to Motion to Dismiss (IBLA 90-414) at 5). According to API and WHOA, when monitoring does not show that wild horses or burros are causing the imbalance, it is assumed that the reduction or removal of some other cause will correct the resource imbalance (e.g., damage). Id. API and WHOA contend it does no good to remove or reduce wild horses if they are not the cause of the imbalance. They urge that this common sense management approach is essentially the argument advanced by BLM in Dahl v. Clark, 600 F. Supp. 585 (D. Nev. 1984). Appellants thus "find it extraordinary that a federal judge would grant a handful of private ranchers

the authority to determine when excess horses exist in the face of BLM's well laid management program." Id.

BLM charges that API and WHOA fail to recognize that, because of the migratory nature of the herds, the checkerboard ruling affects both solid block lands and checkerboard lands (BLM's Reply (IBLA 90-413) at 8). BLM notes that the boundaries of the White Mountain, Great Divide Basin, and Salt Wells Creek WHHMA's, circumscribing the territorial limits of the affected herds, had not been determined at the time of the 1979 litigation. Noting that the boundary between the solid block lands and the checkerboards within the WHHMA's is unfenced, BLM contends that establishing the AML's within the checkerboard also establishes the AML's for all lands within
the WHHMA's incorporating the checkerboard lands. BLM insists that appellants "[ignore] * * * the complex land ownership pattern in the area occupied by these herds. Neither the public lands nor the private lands can be managed independently of the other in the unfenced range of the Rocks Springs District." Id.

[2] The BLM decision to gather wild horses from the White Mountain, Great Divide Basin, and Salt Wells Creek Wild Horse Herd Management Areas and EA No. O48-EA9-213 is designed to implement the United States District Court's March 13, 1981, "Order Granting Motion for Partial Summary Judgement," and February 19, 1982, "Order Amending Judgement Nunc Pro Tunc" in Mountain States Legal Foundation v. Watt, C79-275K (D. Wyo.). The order granting the motion for summary judgment found that "the wild horse population has dramatically increased and the excess demand on grazing lands has created severe problems for ranchers in the Rock Springs area and for the ecological balance of the range" (Mar. 13, 1981, Order at 2). The court further found that the first inventory conducted by BLM after the passage
of the Act revealed 2,364 wild horses in the Rock Springs area in February 1972, with 1,116 of these horses located on lands of the RSGA, and as of March 1979, 6,129 wild horses were in the Rock Springs Grazing District, with 3,413 of these on the lands of the RSGA, and that BLM "contrary to the Act" had "not removed a significant number of horses from [the Rock Springs] area from January 1, 1972 through September 1, 1976." Id.

The resulting court order granting partial summary judgment, issued on March 13, 1981, stated, at page 2:

> [T]he Rock Springs District office of the Bureau of Land Management shall within one year from the date of this Order remove all wild horses from the checkerboard grazing lands in the Rock Springs District except that number which the Rock Springs Grazing Association voluntarily agrees to leave in said area.

The subsequent February 19, 1982, Order amending the March 13, 1981, judgment stated at page 2:

> [T]he Bureau of Land Management has determined that the appropriate management level for the horse herds on the Salt Wells/ Pilot Butte checkerboard lands is that level agreed to by the landowners in that area. All horses on the checkerboard above

> such levels are "excess" within the meaning of 16 U.S.C. 1332(f) (1976 and Supp. III).

For the Sandy and Kemmerer Resource Area the Court further stated:

> FURTHER ORDERED that, in the Final Environmental Impact Statement for the Sandy Area, the Bureau of Land Management's proposed action was for an average herd management level in that area of 825 animals. All horses in the Sandy Resource Area above that level are "excess"; it is
>
> FURTHER ORDERED that, in the Kemmerer Resource Area, the Bureau of Land Management has determined, on the basis of a land use plan, that the wild horse herd should be reduced to zero. All wild horses in that area are also "excess."

Id. In its February 19, 1982, amending order the court directed BLM to remove all excess horses from within the Rock Springs District by September 1, 1984, and defined "excess" in the following manner:

> "FURTHER ORDERED that 'excess,' as used in this Order, means those wild horses above the population level that the Bureau of Land Management has determined to be appropriate, in accordance with its multiple-use management responsibilities under 16 U.S.C. 1332(f) and 1333; or, in the absence of such a determination, the number of horses above the number present at the time the Act was passed."

Id. at 3.

EA O48-EA9-213 sets out the agreed upon management "levels" and, consistent with the agreement, the EA and plans covering the Green River Resource Area (which encompasses the three WHHMA's and the Firehole area) seek to maintain those levels. The EA contemplates gathering between 461 to 777 wild horses in the herd management areas and between 56 to 67 horses in the Firehole area. Arguments advanced by API and WHOA relate solely to the propriety or justification of reduction of the herd size to the level determined in accordance with the court orders. That issue, specifically in terms of AML's of wild horses and what constitutes "excess," has been determined with finality by the District Court orders. Those orders bind BLM's management of wild horses in the Rock Springs District and preclude this Board from reaching issues advanced by API and WHOA. We have no authority to clarify, alter, or amend the District Court's orders, and the remedy sought by API and WHOA lies with that court. 5/ Cf. Craig C. Downer, 105 IBLA 369, 372 (1988). Accordingly, we affirm the Rock Springs District, BLM, decision.

5/ We are not precluded by court order from reaching issues raised by appellants pertaining to the Fifteenmile WHHMA.

[3] BLM's "Evaluation and Update to Fifteenmile Wild Horse Herd Management Area Plan/Capture Plan and EA No. WY016-EA0-08" (Update) states in pertinent part at 3:

> II. Monitoring Information
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> * * * * * * *
>
> C. Utilization
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> Table 4 shows the utilization measured in the HMA since 1982. It can be seen that utilization in the HMA greatly declined in 1984, and is gradually increasing since that time. This decline can be attributed to the wild horse roundup conducted in the fall of 1984, and to a lesser extent a decline in livestock as seen on table 3. Utilization in all allotments (except 00676 and 00669 where livestock use is documented) is attributable to wild horses and wildlife. Utilization levels in all allotments are generally being recorded at acceptable (<35-50%) levels, given current wild horse numbers, and preponderance of non use by livestock. An exception is the 1989 winter utilization in allotments 00669 and 00652 where high levels are attributable to winter sheep use. These generally acceptable utilization levels may also reflect movement of wild horses onto lands contiguous to the 15-Mile pasture. (See III. A Livestock and Wild Horses). Utilization in allotments 01070 and 00604 reflect a lack of water for all uses except seasonal winter use. Utilization levels in allotment 00652 approach maximum yearly utilization limits of 50%, and exceed the 35% limit specified in the HMAP for the season prior to November 1. Utilization in this allotment is due primarily to wild horses. Utilization on the Tatman Mountain prescribed burns, was never measured in a transect, but was observed to be upwards of 80% by BLM personnel, Stinson, Cagney, Heller, McNeil, and Bingham, at various times throughout the 1989 growing season. This use is attributed entirely to horses.
>
> D. Wild Horse Herd Monitoring, Actual Use, and Herd Condition
>
> Actual counts of wild horse numbers within the HMA indicate that the horses are in generally good condition with herd numbers increasing at about 20% per year. Figures 2 and 3 illustrate the distribution of horses in summer and winter respectively. Horses are generally located in the northern 60% of the HMA, concentrating in allotments 00652, 00669, and 00676. There were 20 horses north of the HMA when the August 1989 inventory was conducted.

E. Trend

Table 5 shows the original trend objectives and baseline data collected to initiate the HMAP. These data have not been reevaluated but production and trend are scheduled for the 1990 field season. It is presumed that trend is static. Utilization has declined, while drought conditions prevail. Because moisture in
early June has been only 40% normal, cool season grasses which are the major producers of forage in the area, have had consecutive low production years.

III. Situation Analysis

A. Livestock and Wild Horses (Actual Use Utilization)

* * * * * * *

2. Inside the HMA

a. Fifteenmile Wild Horse Population Dynamics

Table 6 is a log-linear model projecting geometric growth of the wild horse population in the HMA. The variations 6a, 6b, 6c, address wild horse population growth given a range of for-age availability as discussed in part b. below. The wild horse population projections are constant in all three tables. Ini-tial horse numbers were set at 65, the estimated total following the 1984 roundup. Growth rate is set at 20% per year to reflect census data which closely match predicted horse numbers. Garrot (1990) has shown that log-linear regression estimates of expanding wild horse populations in the Pryor Mountain Wild Horse Herd maintained by the BLM range from 1.15-1.27 with a mean of 1.21. The sex ratio established at the 1984 roundup allowed the Fifteenmile herd to attain growth rates over the intervening years similar to those reported by Berger (1986) and Eberhardt et al. (1982). These studies provide evidence that high growth rates for expanding wild horse populations may be common in western wild horse pastures. This 20% figure is held constant through the projection model, even though reproductive rates would probably begin to decline as increasing herd size in a finite HMA reduces habitat quality. The model also assumes that all horses would remain in the HMA although it is probable that some animals would emigrate out of the area. The numbers associated with these variances are not considered significant enough to alter the conclusions derived from this analysis.

In their challenges to BLM's decision, API and WHOA assert that the data presented by BLM do not support the BLM finding that there are excess animals in the Fifteenmile WHHMA justifying BLM's proposed horse removal plans. According to appellants, BLM admits that current utilization lev-els are acceptable. They contend that BLM has

> attempted to make a case for a skyrocketing population, based on a geometric model of hypothetical populations speculating on a steady 20 percent increase level, to predict that horses will consume all available forage in a certain time frame to justify the removal rather than base the determination of excess on monitoring the habitat as required by law.

(API and WHOA Response to July 27, 1990, Order (Response to Order) at 4). Appellants fault BLM's demographic model positing a 20-percent annual increase, arguing that it fails to include foal and mortality rates and losses to the population (other than roundups). They submit that this extrapolation fails to recognize that horses die and that not every female foals annually. Id. They argue that Congress created restrictions that disallow what they perceive as paper manipulation of populations and con-tend that a determination of optimum numbers requires establishing population dynamics information on more than estimates and extrapolations based on a 20-percent foal crop in a static vacuum.

In support of these contentions, API and WHOA submit a copy of an article entitled "Rates of Increase in Long-Lived Animals with a Single Young Per Birth Event." This article was written by Dr. Walt Conley, who served on the first National Academy of Sciences Wild Horse Committee, according to API and WHOA. They contend that his article disputes BLM's birth rate calculations, and that Conley has developed a computer model to more accurately calculate rates of increase, based on actual population factors. API and WHOA argue that Conley's study takes into account the percent of breeding population contributing to population in any given year, the 11-month gestation period, the fact that a 1-year-old horse would not reproduce, 50-55 percent of population being male, the fact that old and sick horses die and wild free-roaming horses move in and out of a population (Motion to Stay Wyoming Roundup at 3). The purported purpose of Conley's article was to establish a series of theoretical upper boundaries for the rate of population growth.

Conley reports that domestic horses have a gestation period of about 330 days, and copulation begins no sooner than 2 years, with the first foal issuing from a 3-year old mare. While Conley acknowledges that information on breeding proportions is scanty, he states that Nelson (1978), reported 55 percent of breeding females have foals (Conley at 116).

At page 122 Conley states further:

> The question of what values for finite rates of increase can be reasonably expected in wild equid populations can be answered in part. Assuming that female survival schedules in wild populations are approximately similar to schedule 4 in Fig. 1, and that proportion breeding is on the order of 50 or 60 percent, finite rates of increase of about 1.05 are to be expected.
>
> Additionally, if survival schedules in the males are lower than those of females, the results presented here are higher than would be obtained in wild populations. Again, the [finite rate of increase] values presented here are conservative.

> At stable age distribution, finite rates of increase higher than 1.20 can be obtained only (see Figs. 3, 4) if the real survival schedules are similar to schedules 1, 2, or 3 (Fig. 1),
> and if the proportion breeding is 0.8 or greater across all age classes, and if age at first breeding is three years, and if breeding span beginning at age three, extends beyond about age 8 to 10. Although adequate data currently do not exist to provide a definitive answer, the conclusion from data that are available is inescapable; empirical values for the various population attributes considered here are simply too low to conclude that rates
> of increase in wild equid populations approach 20-percent, much less exceed that level. Higher rates could obtain, but only on a short term basis; such rates, resulting from unnatural sex ratios, are unstable and tend to damp out quickly (Conley, Gross, Rebar unpublished data).

API and WHOA argue that, in 1985, the Worland District issued an HMAP (Herd Management Area Plan) for the Fifteenmile WHHMA under which wild horses were to be managed and protected in a manner consistent with a list of specified objectives. Comparing objective utilization levels in the 1985 HMAP (50 percent on key species and 25 percent on the south slopes and upper ridges) designed to ensure adequate forage for horses to utilization data collected for a 5-year cycle ending in 1990, they note, shows utilization levels exceeding 50 percent in only one case, "Spring 1990, in Badger Basin" (Response to Order at 2). Appellants state that for all other allotments (Dickie, Badger Basin (except for Spring 1990), Allen Basin Pitchfork and Hunt Oil) utilization was either below 50 percent or was reported as "nonuse or information not available." Id. They argue that BLM failed to consider data demonstrating generally low utilization levels and broad dispersion of bands of horses when reaching the determination that there was an excess number of horses (Response to Order at 4).

BLM responds that its 20-percent figure is based on actual counts, and that "any discrepancy between Conley's conclusion and the district's conclusion must be attributed to flaws in Conley's theoretical model, not flaws in BLM's actual observation" (BLM Motion to Dismiss, Answer, and Request for Expedited Consideration at 5).

Appellants do not dispute the accuracy of the base data used by BLM to derive the "20-percent-per-year" increase since the 1984 round-up and do not contest BLM's conclusion that if the herd continues to grow at the historic rate an ecological imbalance will result and cause resource damage. Appellants refer to Conley's article and contend that it is unreasonable to expect that the growth rate actually experienced since 1984 will continue through 1996, the final year projected by BLM (Update Table 6(a)-6(b)). Conley's computer model does not address the effects of change in range conditions, however.

Past experience in range management demonstrates that the rate of population increase will eventually flatten and there is a risk of a precipitous fall in the animal count when range conditions deteriorate. In

addition, when range land damage is sustained, it is often necessary to reduce the animal population to below that which could be supported by
the remaining forage to give the range an opportunity to recover from the damage.

If BLM were required to wait until actual damage occurs before removing what is then obviously an excess number of horses, the number of horses in the remaining herd would, in most likelihood, be smaller than it would be
if horses are removed when the herd approached the critical size. It is fortunate that BLM is not required to wait until the range has sustained resource damage as a result of an ecological imbalance before reducing the size of the horse herd. Proper range management dictates removal of horses before the herd size causes damage to the range land. 6/ Thus, the optimum number of horses is somewhere below the number that would cause damage. Removal of horses before range conditions deteriorate ensures that horses enjoy adequate forage and an ecological balance is maintained. Good range conditions in turn would tend to promote a high annual population rate similar to that experienced since 1984.

The projected annual rate of increase in population is a critical assumption underlying a decision to reduce the size of a herd. Presently "[u]tilization levels in all allotments are generally being recorded at acceptable ([less than] 35-50 percent) levels, given current wild horse numbers, and preponderance of non use by livestock," with the exception
of "1989 winter utilization in allotments 00669 and 00652 where high levels are attributable to winter sheep use" (Update at 4). Consequently, if the 20-percent increase posited by BLM is shown to be incorrect there may be no need for the 1990 horse gather within the Fifteenmile WHHMA, save allotments 00669 and 00652.

The scientific basis underpinning BLM's conclusion is the field observation that in recent years the herd has been growing at a 20-percent annual rate. BLM projects the herd size by assuming that the rate of increase actually experienced during the preceding years will continue. Appellants only argue that a roundup at this time is premature. They do not contend that it will never be necessary to remove horses from the area, nor do
they deny that good rangeland management may dictate a periodic wild horse roundup to reduce the size of the herd. Thus, the removal decision becomes one of when to remove rather than whether to remove.

6/ The term "excess animals" is defined to include those animals "which must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area." 16 U.S.C. § 1332(f) (1988). BLM points out that when that definition is read in conjunction with the Secretary's authority in 16 U.S.C. § 1333(b)(2) (1988) to protect the range from the deterioration associated with overpopulation, it indicates that Congress intended the Secretary to prevent damage to the range, not merely to repair the range once the damage had been done. We agree with that assessment.

We cannot say that BLM is in error in relying on a present known variable (20 percent based on monitoring data) as a basis for determining future projected population increases nor can it be said that there is a proven basis for deviating from this known variable. This is not a case where BLM has failed to act on a proven deviation from a trend. If the data collected when monitoring the wild horses after 1990 fails to support similar annual population increases of 20 percent, BLM will then be required to rely on its subsequent data as support for any future removals. Consequently, if after the now contemplated removal, the herd grows at a slower rate than that experienced to date, the next roundup will be some months or years later than might be anticipated if the current rate of growth continues.

Appellants now seek to refute the likelihood of a similar 20-percent increase in the future but have not posited an alternative figure that would permit BLM to predict future population increases with any greater accuracy. All parties recognize that the herd size will increase in the future, with or without the now contemplated gather. Conley postulates several scenarios of likely population growth based on several models, but appellants have not identified which figure they wish us to adopt, or why. They have merely used Conley's article as a basis for suggesting that the figure BLM has chosen is wrong. We are particularly reluctant to disturb BLM's extrapolation based on existing data when, as in this case, a failure to act based on current data may well lead to ecological imbalance and a deteriorating range if the increases postulated are borne out in the future. This risk is intolerable, given the statutory mandate to maintain a "thriving ecological balance." In contrast, the risk associated with relying on current data will not lead to range deterioration or ecological imbalance, but will at most result in too many horses being removed requiring the deferral of future roundup plans consistent with monitoring data available in the future.

In circumstances such as those presented by this case, we are unwilling to overturn a BLM decision if the appellant merely presents some other course of action which may be theoretically as correct as that chosen by BLM. The Department is entitled to rely on the reasoned analysis of its experts in matters within the realm of their expertise. In cases involving an expert's interpretation of data, it is not enough that the party objecting to the determination demonstrates that another course of action or interpretation is available or that the party's proposed course of action is also supported by the evidence. The appellant must demonstrate by a preponderance of the evidence that the BLM expert erred when collecting the underlying data, when interpreting that data, or in reaching the conclusion. See Mallon Oil Co., 107 IBLA 150, 159 (1989); Winston L. Thornton, 106 IBLA 15, 20 (1988). Appellant has failed to demonstrate that BLM erred when basing its determination to remove excess horses upon a 20-percent per year growth rate for the herd. The projected growth rate was based upon past experience with the herd in question, and the choice of a rate of growth higher than those suggested by API and WHOA (a more conservative approach in this application) is understandable and reasonable.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal of Jo Ann M. Chase is dismissed, the decision of the Rock Springs District to gather wild horses in Great Divide Basin, White Mountain, and Salt Wells Creek WHHMA's and the Firehole area (outside the WHHMA's) is affirmed and the decision of the Grass Creek Resource Area to gather wild horses within the Fifteenmile WHHMA is affirmed.

R. W. Mullen
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge